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Docket No. 200309887-1

Remarks

This Election is responsive to the Restriction Requirement issued June 21, 2006.

Summary of The Restriction

Restriction to one of the following inventions was required under 35 U.S.C. 121:

I. Claims 1-19, 28-29, drawn to scheduling processes based in part on a charge rationing status, classified in class 713, subclass 300.

II. Claims 20-27, 30-32, drawn to scheduling processes based in part on a processor operating frequency, classified in class 713, subclass 300.

Election

In response to the Restriction Requirement, Applicant elects, with traverse, to prosecute Invention II, claims 20-27 and 30-32.

The Office Action asserts that Inventions I and II are related as sub-combinations disclosed as useable together in a single combination. The Office Action asserts that sub-combinations are distinct if they do not overlap and at least one is separately useable. Applicant does not believe that Inventions I and II are distinct in accordance with MPEP 806.05(d). Inventions I and II overlap because the charge rationing status of the frequency scaleable processor is related to the frequency of the frequency scaleable processor. Determining an operating frequency of a frequency scaleable processor (Claim 20, Invention II) would involve determining a charge rationing status of a frequency scaleable processor (Claim 1, Invention I). The relationship between charge rationing status and frequency is evidenced in at least claims 2 and 3. For example, claim 2 reads "where the charge rationing status can be determined by evaluating an operating frequency of the processor."

The Office Action asserts that Invention I is distinct from Invention II because Invention I can schedule operations (executables) without determining or utilizing the operating state of the processor. However, claim 1 recites that the scheduling logic "determines a charge rationing status of a frequency scaleable processor." The charge rationing status is a state of the processor.

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The Office Action concludes that restriction is proper because the two inventions would require a different field of search. Yet Invention I and Invention II are both classified in class 713, subclass 300, which shows that different fields of search would not be required. For at least this reason a prima facie case for the propriety of the restriction requirement has not been presented. Additionally, as described above, the claims overlap. Thus, the restriction should be withdrawn.

Respectfully submitted,

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